

C H McCloud Corp.
113 E Wayne Street
South Bend, IN 46601

Permit RR71-02356
District 1

I.
BACKGROUND OF THE CASE

C H McCloud, 113 E. Wayne St. South Bend, IN 46601 (“Applicant”), is the applicant for renewal and transfer of ownership of an Alcohol and Tobacco Commission (“ATC”) type 210 permit, Permit #RR71-02356. This permit has been the subject of much controversy and confusion because of ATC violations filed against a former owner. The ATC assigned the applicant’s applications to the St. Joseph County Local Board (“LB”). The LB apparently considered, but did not vote on the application for transfer of ownership. ATC Vice Chairperson, Barbara L. Glass, at the ATC’s regularly scheduled public meeting on May 6, 2002, made a motion to approve the application for transfer of ownership and the ATC voted to approve her motion.

Appeal of the LB action and ATC action was filed and was assigned to ATC Hearing Judge, Daniel M. Steiner (“HJ”) and was set for hearing. At said hearing on August 28, 2002, the Applicant was represented by attorney Donald Wertheimer, 1017 E. Jefferson Blvd., South Bend, IN 46617 and the remonstrator-City of South Bend, was represented by attorney Aladean DeRose of the remonstrator’s Division of Law. At that time, witnesses were sworn, evidence was heard and the matter was taken under advisement. At this time, the HJ submits his Proposed Findings of Fact and Conclusions of Law to the ATC for consideration.

II.
EVIDENCE AT THE HEARING

A.
WITNESSES

The following witnesses were sworn and gave testimony at the appeal hearing:

1. Cynthia Hammons (Cyn Hammons), Vice President of the applicant Corporation. She testified that she was at the relevant LB hearings. She stated that the fine referred to in the Remonstrator's Exhibit A, paragraph 3, was actually \$3,500. Also, regarding Exhibit A, last paragraph, she didn't talk with Mr. Cheney regarding this bar. Also, regarding Applicant's Exhibit 11, the obligations referred to were Cheney's obligations, which were paid. On cross-examination, she stated she had talked with a Ron Johnson and attorney Michael Dvorak regarding this permit. She talked with Johnson regarding operation of the building and who the alcoholic beverage suppliers were. She met with Cheney one time at the bar during a city street festival. The bar was sitting empty when they took over and they purchased the contents and inventory from Johnson. She hasn't seen Cheney in a long time and isn't sure she would recognize him. Again, regarding Exhibit 11, she learned nearly everything on this from Johnson and not Cheney. She doesn't know who owned the beverages and Dvorak represented Cheney, not them.
2. Charles Hammons (Ch Hammons), President of the Applicant corporation. He was convicted in 1994, for an offense involving an inmate and this was after he had been a police officer for 18 years. This has been his only conviction and he has worked for private detective agency. They do not have live music at this premise and they have had no ATC citations. They had a server-training program and Excise has answered all their questions. On cross-examination, he stated he was a booking supervisor when he was charged and booking safeguards were required to be on a computer.
3. John Mortakis (Mortakis), a South Bend Police Department (SBPD) officer for 20 years. He is an undercover special officer, working drug, prostitution, vice and excise violations. He said Don Johnson, brother of the aforementioned Ron Johnson, was the original applicant for transfer of this permit. There are a lot of problems with bars in downtown South Bend. The roof top festival type events usually have professional patrons who break up at around 9:00 pm. He investigated and led the raid of Finnegan's in 2000. They had warned the owner and he had seen Ron Johnson behind the bar. He had seen Ron Johnson behind the bar half the times he was there. Cheney was there also but he doesn't know anything about Cheney's and Ron Johnson's business association. He doesn't have any knowledge of Ch Hammons' conviction.
4. Terry Miller (Miller), a recently retired South Bend Police officer. He was the lead investigator in Ch Hammons' criminal case. He has been the Indiana Department of Revenue's contact person with the SBPD and their information has been turned over to the St. Joseph County Prosecutor.

B.
EXHIBITS

The following Exhibits were offered at the appeal hearing:

1. Applicant's Exhibit 1, a newspaper article from the South Bend Tribune.
2. Applicant's Exhibit 2, an ALJ opinion regarding an action against Ch Hammons and Exhibit 2A, a petition regarding a previous administration action against same.
3. Applicant's Exhibit 3, an Affidavit of Patrick
4. Applicant's Exhibit 4, an Affidavit of Ron Johnson.
5. Applicant's Exhibit 5, an Affidavit of John Friedline, the owner of Century Properties Inc.
6. Applicant's Exhibit 6, Internet copies of South Bend Tribune articles.
7. Applicant's Exhibit 7, in 8 parts, photographs of the area in question in downtown South Bend.
8. Applicant's Exhibit 8, in 2 parts, a letter from ATC prosecutor, Frederick T. Bauer.
9. Applicant's Exhibit 9, an ATC settlement offer with the former owner of this permit.
10. Applicant's Exhibit 10, a lease from Ron Johnson to Julius Cheney.
11. Applicant's Exhibit 11, a record of payments by Ch Hammons.
12. Applicant's Exhibit 12, a newspaper article from the South Bend Tribune.

All above exhibits were admitted without objection.

13. Remonstrators Exhibit A, Ms. DeRose's notes from the LB meeting concerning this application.
14. Remonstrator's Exhibit B, a newspaper article dated February 2, 2002, from the South Bend Tribune.
15. Remonstrator's Exhibit C, in 19 parts, consisting of police regarding Ch Hammons from 1994. Also, a transcript of Ch Hammons' sentencing hearing.

These exhibits were admitted without objection. Administrative notice was taken of this file, including the record of proceedings at the LB hearing.

III.

PROPOSED FINDINGS OF FACT

1. That CH McCloud, 113 E. Wayne St. South Bend, IN 46601, is the applicant for transfer of an ATC, type 210 permit, permit #RR71-02356. (ATC file).
2. That the ATC found by substantial evidence that the Applicant is not disqualified from holding this permit. Remonstrator argues that Applicant is not qualified because of Applicant's moral character based on a criminal conviction for trafficking with an inmate in 1994. (ATC file, LB hearing and ATC appeal hearing).

3. That this conviction, although probative and relevant in assessing the Applicant's character, is too far removed in time and not sufficient standing alone to support a reversal of the ATC's approval and support a denial of this application. (ATC file, LB hearing and ATC appeal hearing).
4. That no other issues as to Applicant's qualifications to hold this permit at this location were raised to support a reversal herein (ATC appeal hearing).
5. That any Conclusion of Law found in the above Findings of Fact shall be considered as and adopted by the ATC as their Conclusion of Law.

IV. CONCLUSIONS OF LAW

1. That CH McCloud, 113 E Wayne St., South Bend, IN 46601, is the Applicant for an ATC type 210 permit, Permit RR71-02356. (ATC file).
2. That although it is not completely clear that the LB fully considered or made a recommendation on the application, the ATC found that they had given adequate consideration to it and the ATC voted to approve the application. (ATC meeting of May 6, 2002).
3. That no evidence presented either at the LB hearing or ATC meeting would support a reversal of the ATC decision to grant this application.

THEREFORE, IT IS ORDERED AND ADJUDGED that the decision of the ATC to grant this application is supported by substantial evidence, this evidence has not been rebutted by the remonstrator and the appeal of the remonstrator is denied

Date _____

Daniel M. Steiner, Hearing Judge